

EVOLUTION OF BIODIVERSITY PROTECTION IN THE FRAMEWORK OF EUROPEAN COMMON AGRICULTURAL POLICY

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ABSTRACT

The Common Agricultural Policy has undergone continuous evolution over the years, moving from a narrow, production-oriented approach to an agriculture with holistic approach, in which agricultural activity is intended to be treated having harmonious and sustainable utilization and rational management of natural resources and components of nature. The goal of protecting biodiversity within the Common Agricultural Policy becomes increasingly visible with each successive financing period; yet its fulfilment encounters numerous difficulties, primarily due to the resistance of Member States to introducing far-reaching changes, as well as due to the resistance of agricultural environments considering the indicated changes as striking their interests. The aim of this article is to evaluate the legal solutions adopted within the framework of the Common Agricultural Policy, both in its initial period of validity and the period commencing from year 2000, when the focus on environmental issues became significantly more prominent. This article also evaluates the currently applicable financial perspective in the context of its potential for protecting biodiversity in agricultural activities.

Keywords: Biodiversity protection; Common Agricultural Policy; Agricultural law; Agri-environmental schemes

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1. INTRODUCTION

Intensive agriculture negatively impacts biodiversity. It is typically based on large-scale monocultures that diminish the scenic value of regions and contribute to the disappearance of field trees, wetlands, and fallow lands, which serve as valuable habitats for flora and fauna and as migratory corridors for many animal species. Additionally, the intensive use of "agricultural chemicals" contributes to the decline of biodiversity.¹ The number and variety of species living on agricultural lands in Europe have been decreasing for many years. For example, since 1990, the population of farmland birds and meadow butterflies has decreased by over 30%.² This happens despite the fact that agriculture in the European Union is characterized by a relatively low unit potential of farms, a high share of family labour and part-time work, a low scale of production, a low level of specialization (multi-directional production), and high land prices. European agriculture is characterized by a relatively lower level of concentration processes compared to many regions of the world, such as North and South America, Australia, New Zealand, Northern and Western Asia (former USSR countries), and, to some extent, Africa.³ The Common Agricultural Policy (CAP) aims to address the issue of biodiversity loss. With each subsequent funding period, there is a noticeable increase in the emphasis by EU legislators on actions targeted at biodiversity protection. However, the question arises whether the adopted solutions can effectively translate into halting the problem of progressive biodiversity loss in agricultural activities. To find an answer to this question, this article analyzes the legal solutions adopted within the CAP from its inception to the present day. The article employs the formal-dogmatic method, which involves analyzing the legal acts of the EU's Common Agricultural Policy, and the historical method, which involves indicating changes in the legal solutions adopted by EU legislators over the various years of the CAP's existence.

2. THE GENESIS OF BIODIVERSITY PROTECTION IN THE COMMON AGRICULTURAL POLICY

Initially, issues related to biodiversity were not in a focus of the European Union's Common Agricultural Policy (CAP). In the 1960s and 1970s, the CAP was primarily geared towards meeting the food needs of a war-torn Europe and to support farm incomes. It was based on the price and

¹ Głodowska, M. & Gałązka, A., 'Intensyfikacja rolnictwa a środowisko naturalne [The intensification of agriculture and the natural environment]', (2018) *Zeszyty Problemowe Postępów Nauk Rolniczych* no 592, pp. 10-11, <<https://doi.org/10.22630/ZPPNR.2018.592.1>>.

² Biodiversity on agricultural land – common agricultural policy has not prevented the deterioration of the situation, Special Report of the European Court of Auditors No. 13/2020, p. 4, <https://www.eca.europa.eu/Lists/ECADocuments/SR20_13/SR_Biodiversity_on_farmland_EN.pdf>.

³ Kowalczyk, S. & Sobiecki, R., 'Europejski model rolnictwa – uwarunkowania ewolucji [The European agricultural model – conditions for evolution]', (2011) 98(3) *Roczniki Nauk Rolniczych [Annals of Agricultural Sciences]* Series G 13, <https://sj.wne.sggw.pl/pdf/RNR_2011_n3_s9.pdf>.

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production supports, which were defined for each commodity group. Support for agricultural production and farmer incomes was provided through agricultural subsidies, guaranteed prices, support for agrarian transformations, and the creation of elements of a common market. The price supports stimulated production growth, which finally led to overproduction. In order to prevent overproduction pressuring the prices, some of the produce had to be removed from the market. This required financial resources, resulting in growing CAP budget costs. It triggered a CAP crisis.⁴ Moreover, the focus on unlimited production had detrimental effect on biodiversity, leading to its limitation.

In 1972, as part of the Mansholt Plan, a set-aside system was introduced. While this solution somewhat improved the protection of biodiversity, it was a completely incidental effect and was not significant in the face of further intensification of agricultural production within large farms concentrating land and using it for intensive agricultural purposes.⁵

The idea of protecting biodiversity within the Common Agricultural Policy (CAP) was first included in Council Regulation No. 797/85/EEC of 12 March 1985 on improving the efficiency of agricultural structures.⁶ It indicated that Member States were authorized to implement special aid programs in environmentally sensitive areas, primarily those of significant natural and landscape value. Assistance could be granted to farmers operating in such areas to protect or improve the environment. Farmers were obligated at least to ensure no intensification of agricultural production and to maintain livestock numbers in accordance with the environmental needs of these areas (Article 19 of Regulation No. 797/85/EEC). Subsequently, in Council Regulation (EEC) No. 1760/87 of 15 June 1987 amending Regulations No. 797/85, No. 270/79, No. 1360/78, and No. 355/77 concerning agricultural structures, adaptation of agriculture to new market situations, and maintaining rural areas, the aforementioned idea was upheld.⁷ This regulation once again authorized Member States to adopt special aid programs for farmers implementing agricultural practices in line with the environmental protection needs, natural resources, and rural landscape on areas identified by the Member States (Articles 19-19c of

⁴ Lovec, M., 'The European Union's Common Agricultural Policy reforms. Towards a Critical Realist Approach', [in:] *Central and Eastern European Perspectives on International Relations*, London (2016), 1-2, <<http://dx.doi.org/10.1057/978-1-137-57278-3>>.

⁵ Gała, P., 'Ochrona różnorodności biologicznej jako determinanta Wspólnej Polityki Rolnej [Protection of biodiversity as a determinant of the Common Agricultural Policy]', (2017) XXVI (1) *Studia Iuridica Lublinensia* 198-201, <<http://dx.doi.org/10.17951/sil.2017.26.1.193>>.

⁶ Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures, OJ L 93/1, 30.03.1985.

⁷ Council Regulation (EEC) No 1760/87 of 15 June 1987 amending Regulations Nos 797/85, 270/79, 1360/78 and 355/77 on agricultural structures, adaptation of agriculture to new market situations and the preservation of rural areas, OJ L 167/1, 26.06.1987.

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Council Regulation EEC 1760/87). This approach was considered innovative and experimental, and above all, it was non-mandatory for Member States.⁸

Only in the early 1990s did voices emerge suggesting that agriculture should fulfill new roles in the economy and society, and that the prevailing orientation of the European Community's agricultural policy did not meet the challenges of the present, let alone the future. From this idea emerged the main principles introduced by the Mac Sharry reform in 1991⁹. The fundamental objectives of this reform were recognized as: the preservation of the multi-functionality of agriculture, the conservation of the natural environment and traditional rural landscapes, and the strengthening of the agricultural model based on the dominance of family farms. Under the concept of multifunctional agriculture, two fundamental functions were understood and defined: the production of food and food raw materials (as the key objective) and environmental protection. This stage of agricultural policy modification initiated changes in the ways of supporting agriculture, particularly a tendency towards gradually decoupling public aid from production volume, while prices of agricultural products (including food) were lowered in exchange for direct assistance to farms linking the obligation of fallowing part of the farm's agricultural land. This approach aimed to correct the negative effects of the Common Agricultural Policy (CAP) and reduce agricultural surpluses. The Mac Sharry reform emphasized the competitiveness of European agriculture internationally and structural actions with environmental benefits.¹⁰ One of the manifestations of actions under this reform supporting the idea of biodiversity conservation in the CAP was the establishment of agri-environmental programs – this time mandatory for Member States. In this context, Regulation (EEC) No. 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of environmental protection and the maintenance of rural areas played a particularly significant role.¹¹ The assistance programs established under Regulation No. 2078/92 enabled farmers to receive funding for environmental projects. These projects included *inter alia*: significant reduction in fertilizer and pesticide use, implementation or continuation of organic farming activities, reducing the proportion of sheep and cattle to feed area, preserving natural resources, rural landscapes, and rare local animal breeds at risk of extinction, maintaining abandoned agricultural and forestry land or fallowing land for at least 20 years for subsequent use for environmental purposes, (Article 2 of Regulation No. 2078/92). The assistance programs were prepared by Member States, taking into account their diversity in terms of environmental conditions, agrarian structure, and

⁸ Król, M., 'Rola programów rolnośrodowiskowych w ochronie obszarów cennych pod względem przyrodniczym' [The role of agri-environmental programs in the protection of areas valuable in terms of nature], (2012) LXXXVI Studia prawno-ekonomiczne [Legal and Economic Studies] 72-73.

⁹ Ibid, Gała, P., pp 198.

¹⁰ Gała, P., Ibid, pp 199-201.

¹¹ Council Regulation (EEC) No. 2078/92 of 30 June 1992 on agricultural production methods compatible with environmental protection requirements and the maintenance of rural areas, OJ L 215/85, 30.07.1992.

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most popular agricultural practices. A farmer could receive an annual premium per hectare or per animal unit if they engaged in one or more of the activities listed above for a period of at least 5 years, or 20 years in the case of fallowing (Articles 3-4 of Regulation No. 2078/92). Furthermore, under Council Regulation (EEC) No. 2080/92 establishing a Community aid program for forestry measures in agriculture, aid schemes were provided to enable farmers to receive funding for afforestation of land. These programs included support for afforestation costs, an annual premium per hectare for maintaining afforestation for the first 5 years, an annual premium per hectare for income lost due to afforestation, as well as support for investments to provide protective belts, firebreaks, water points, forest roads, and to improve cork oak stands (Article 2 of Regulation No. 2080/92).¹²

3. THE FINANCIAL PERIOD 2000-2006

In July 1997, the European Commission announced its "Agenda 2000". It formulated the EU's development strategy for the turn of the century, which included deepening and enlarging the Union, reforming major EU policies including the Common Agricultural Policy (CAP), and involving candidate countries in the integration process. Regarding CAP reform, Agenda 2000, while maintaining the existing level of agricultural expenditure, changed its structure. These funds were redirected more towards direct payments to farmers and rural development. However, the scope of intervention in agricultural markets was reduced. The European Agricultural Model concept introduced by Agenda 2000 divided CAP into two pillars: Pillar I (agriculture), covering price and quality competitiveness, direct payments, production limits, benefits of direct payments, decentralization, and simplification of CAP; and Pillar II (rural areas), covering rural development issues in the EU, including the development of the multi-functionality concept in these areas. The European Agricultural Model emphasized not only the need and principles of sustainable rural development and the economic, environmental, ethical, economic, and social conditions but also the importance of new agricultural policy and its consequences for agriculture and society as a whole. Within this concept, CAP reforms addressed other issues important for this stage of European agricultural development: food quality and safety, agricultural and rural environment, and animal welfare and the quality of animal production.¹³ From the perspective of biodiversity conservation, these provisions formed the basis for the idea that agriculture is an economic and social sphere of human activity that should be associated with particular responsibility for maintaining ecosystems, both natural and agriculturally processed.

Reflecting the adopted concept were the adopted legal acts: Council Regulation (EC) No. 1257/1999 of 17 May 1999 on support for rural

¹² Council Regulation (EEC) No. 2080/92 of 30 June 1992 establishing a Community aid program for forestry actions in agriculture, OJ L 215/96, 30.07.1992.

¹³ Ibid, P. Gała,, p. 202.

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development from the European Agricultural Guidance and Guarantee Fund (EAGGF)¹⁴, and Council Regulation (EC) No. 1259/1999 of 17 May 1999 establishing common rules for direct support schemes under the common agricultural policy.¹⁵ Regulation No. 1257/999 provided for support programs for actions aimed at preserving and promoting the high value of nature and sustainable agriculture respecting environmental protection requirements (Article 2 of Regulation No. 1257/1999). Support for investments in agricultural holdings could be granted if it met one of the objectives specified in the regulation, including the objective of preserving and improving the natural environment, and if the farmer met minimum environmental, hygiene, and animal welfare standards (Articles 4 and 5 of Regulation 1257/1999). The regulation also provided support for less-favoured areas to ensure the use of agricultural land, maintaining rural areas, maintaining and supporting agricultural systems, which especially consider environmental protection requirements, as well as areas subject to ecological constraints to ensure the operation of the farm in a manner that respects environmental protection requirements. Payments on areas subject to ecological constraints under community regulations for the protection of the natural environment were intended to compensate farmers for costs or lost income incurred as a result of these constraints (Article 13 of Regulation 1257/1999). Furthermore, support was provided for agricultural production methods designed to protect the environment and maintain rural areas.

Under the above, methods of agricultural use in accordance with the principles of environmental protection and improvement of environmental quality, landscape and its elements, natural resources, soil, and genetic diversity were promoted, environmentally friendly agricultural intensification, and low-intensity grazing systems, maintaining agricultural environments of high natural value that are threatened, maintaining landscape and historical features of agricultural land use, environmental planning in agricultural practice. These practices had to go beyond ordinary good agricultural practice. Support was granted annually to farmers who committed to applying agri-environmental practices for at least five years (Articles 21-23 of Regulation No. 1257/1999).

In turn, in the first pillar of the CAP, no mandatory environmental protection solutions were initially introduced. Based on Regulation No. 1259/1999, Member States were only authorized to take such environmental protection measures as they deemed appropriate, taking into account the situation of the agricultural land used or the specific production and reflecting the potential environmental impact. These measures could include support in exchange for agri-environmental commitments, general, mandatory environmental protection requirements, specific environmental

¹⁴ Council Regulation (EC) No. 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and repealing certain regulations, OJ L 160/80, 26.06.1999.

¹⁵ Council Regulation (EC) No. 1259/1999 of 17 May 1999 establishing common rules for direct support schemes under the common agricultural policy, OJ L 160/113, 26.06.1999.

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protection requirements that condition the granting of direct payments. Member States were also to decide on penalties that are appropriate and proportional to the seriousness of the ecological consequences in the case of non-compliance with environmental protection requirements, including the reduction or elimination of benefits associated with these support systems (Article 3 of Regulation No. 1259/1999).

This situation changed with the adoption of Council Regulation (EC) No. 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers.¹⁶ The regulation for the first time introduced mandatory linking of receiving direct payments to environmental protection requirements. The principle of cross-compliance provided that every farmer receiving direct payments is obliged to comply with basic management requirements and principles of good farming practice consistent with environmental protection (Article 3 of Regulation No. 1782/2003). Basic management requirements were established under Community legislation in the areas of public health, animal health, and plant health, in the environment, and in animal welfare. From the perspective of biodiversity protection, the following basic management requirements were significant and arose from the then-applicable legal acts: Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds¹⁷; Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances¹⁸; Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, in particular of the soil, when sewage sludge is used in agriculture¹⁹; Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources²⁰; Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora²¹; Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market.²² Under the specified legal acts, farmers were obliged, among other duties to:

¹⁶ Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No. 2019/93, (EC) No. 1452/2001, (EC) No. 1453/2001, (EC) No. 1454/2001, (EC) No. 1868/94, (EC) No. 1251/1999, (EC) No. 1254/1999, (EC) No. 1673/2000, (EEC) No. 2358/71 and (EC) No. 2529/2001, OJ L 270/1, 21.10.2003.

¹⁷ Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ L 103/1, 25.4.1979).

¹⁸ Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances, OJ L 20/43, 26.1.1980.

¹⁹ Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, in particular of the soil, when sewage sludge is used in agriculture, OJ L 181/6, 4.7.1986.

²⁰ Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, OJ L 375/1, 31.12.1991.

²¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206/7, 22.7.1992.

²² Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market, OJ L 230/1, 19.8.1991.

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- protect the natural habitats of all species of wild birds occurring naturally in the wild;
- forbear from the intentional killing or capture of species of wild birds occurring naturally in the wild, and to intentionally destroy or damage their nests and eggs;
- to prohibit or, in some cases, require permission to introduce certain harmful substances into groundwater directly or indirectly;
- use of sewage sludge from sewage treatment plants dealing with domestic and municipal sewage and from other treatment plants only under strictly defined conditions;
- comply with a set of good agricultural practice rules and action programs introduced by Member States regarding risk zones;
- comply with protective measures introduced by the Member State for special protection areas,
- forbear from intentional uprooting, picking, cutting, pulling, or destroying plants of species remaining under strict protection in their natural range, occurring naturally, and also retaining, transporting, selling, or exchanging, and offering for sale or exchange specimens of these species obtained from the wild state, except specimens legally acquired before the directive came into force,
- forbear from the use of any means of capturing, capturing, or killing that could cause local extinction or serious disturbance of populations of wild species;
- use only plant protection products authorized for marketing and using them properly, i.e., in accordance with the conditions stated on the label and in accordance with the principles of good plant protection practice, and in every case, where possible, with the principles of integrated pest management (Article 4 of Regulation No. 1782/2003).

Irrespective of the basic requirements for management, farmers applying for direct payments were obliged to comply with the principles of good agricultural practices consistent with environmental protection. These principles were established by Member States based on the frameworks established in Annex IV to Regulation 1782/2003 and initially were not particularly elaborate. They included requirements for soil protection, including maintaining adequate levels of organic matter and appropriate structure, and preventing the destruction of natural habitats, taking into account the specific characteristics of the relevant areas, including soil and climatic conditions, existing farming systems, land use, crop rotation, cultivation methods, and farm structures. Additionally, Member States were generally required to ensure that land designated as permanent pasture remained as such unless it was land designated for afforestation in accordance with environmental protection principles (Article 5 of Regulation No. 1782/2003). Failure to comply with the basic requirements for management or principles of good agricultural practices resulted in a reduction or even cancellation of the total amount of direct payments in the

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calendar year in which the violation occurred (Article 6 of Regulation No. 1782/2003).

4. THE FINANCING PERIOD 2007-2013

In the subsequent financing period, no significant changes were introduced, except for the expansion of existing solutions. In Council Regulation (EC) No. 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), the regulation regarding agri-environmental payments was expanded compared to the previous financing period.²³ Support was provided for farmers' participation in food quality systems, including organic farming systems (Article 32 of Regulation No. 1698/2005). Moreover, support was provided for actions to improve the natural environment, including payments for farmers managing Natura 2000 areas and areas protected under Directive 2000/60/EC, agri-environmental payments, payments for non-productive investments (related to agri-environmental actions or actions in Natura 2000 areas or other areas of high natural value identified in the program), payments for first afforestation of agricultural land, payments for the first establishment of agroforestry systems on agricultural land (Articles 20 and 36 of Regulation No 1698/2005). Support for farmers' participation in food quality systems covered agricultural products intended solely for human consumption and was intended for community food quality systems or systems recognized by Member States. This support was provided as an annual motivating payment, the amount of which was determined based on the level of fixed costs resulting from participation in the supported system for a maximum period of 5 years (Article 32 of Regulation No. 1698/2005). Support for difficulties associated with farming in Natura 2000 areas and areas protected under Directive 2000/60/EC was provided to farmers annually per hectare of agricultural land to compensate for the costs and lost income resulting from inconveniences in those areas (Article 38 of Regulation No. 1698/2005). Agri-environmental payments were granted to farmers who voluntarily undertook agri-environmental commitments. These commitments went beyond the relevant mandatory standards established in accordance with Articles 4 and 5 and Annexes III and IV of Council Regulation (EC) No. 1782/2003, as well as minimum requirements for the use of fertilizers and plant protection products and other relevant mandatory requirements established by national legislation and specified in the program. Agri-environmental commitments were usually undertaken for a period of 5 to 7 years, in some cases for a longer period. Payments were made annually and covered additional costs and lost income resulting from the commitment undertaken. In some cases, they could also cover transaction costs (Article 39

²³ Regulation (EC) No 1698/2005 of the European Parliament and of the Council of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), OJ L 277/1, 21.10.2005.

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of Regulation No. 1698/2005). Payments for non-productive investments were provided for investments related to the implementation of agri-environmental commitments or other agri-environmental objectives or investments on the farm that increased the public utility of Natura 2000 areas or other areas of high natural value identified in the program (Article 41 of Regulation No. 1698/2005). Payments for the first afforestation of agricultural land included establishment costs, an annual premium per afforested hectare to contribute to covering maintenance costs for a maximum period of 5 years, an annual premium per hectare to contribute to covering income loss resulting from afforestation for a maximum period of 15 years for farmers or their associations cultivating the land before afforestation, or for any other natural person or private entity. On the other hand, payments for the first establishment of agroforestry systems on agricultural land were granted to farmers to create agroforestry systems combining extensive farming and forestry. Support covered the establishment costs. Agroforestry systems referred to land use systems where trees were cultivated in combination with agriculture on the same land. Both payments for the first afforestation of agricultural land and payments for the first establishment of agroforestry systems on agricultural land did not include trees intended for Christmas trees, and for agroforestry systems, rapidly growing species for short-term cultivation were also excluded from support (Articles 43-44 of Regulation No. 1698/2005).

In 2008, the review of the Common Agricultural Policy of the European Union concluded, during which modifications were made to CAP instruments while preserving its structure.²⁴ The key findings of the review concerned maintaining the direction of CAP changes regarding the separation of direct payments from production and linking payments to requirements related to environmental protection, food safety, and animal welfare. Consequently, in Council Regulation (EC) No. 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, the principle of mutual compatibility was maintained. According to this principle, farmers receiving direct payments had to continue meeting basic management requirements and adhere to principles of good agricultural practice consistent with environmental protection. The basic management requirements remained similar to those previously in place, while the standards of good agricultural practice were expanded.

Member States were obliged to ensure that all agricultural land, especially land no longer used for production purposes, was maintained in good agricultural practice consistent with environmental protection. Member States defined, at the national or regional level, minimum requirements for good agricultural practice consistent with environmental

²⁴ Kruszyński, M., 'Działania prośrodowiskowe jako instrument Wspólnej Polityki Rolnej Unii Europejskiej' [Environmental actions as an instrument of the Common Agricultural Policy of the European Union], (2023) 4/2023(114) Zagadnienia Doradztwa Rolniczego 31, <<https://cdr.gov.pl/images/ZDR/2023/ZDR-2023-4-KRUSZYNSKI.pdf>>.

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protection based on the frameworks established in Annex III to the regulation, taking into account the specific characteristics of the relevant areas, including soil and climatic conditions, existing agricultural systems, land use, crop rotation, cultivation methods, and farm structure. Member States also had to ensure that land previously under permanent grassland remained as such. But this requirement did not apply to land designated as permanent grassland for afforestation, provided such afforestation complied with environmental protection principles, excluding Christmas tree plantations and short rotation coppice plantations. Member States could, under duly justified circumstances, derogate from the requirement to maintain permanent grassland, provided they took action to prevent any significant reduction in the total area of permanent grassland (Articles 4-6 of Regulation No. 73/2009).

5. THE FINANCING PERIOD 2014-2020

Negotiations regarding the future of the CAP after 2013 lasted several years, with the basis for the proposed new CAP being its review in 2007-2008 (Health Check), which resulted in the Commission's communication "CAP towards 2020: Meeting the challenges of food security, natural resources and territorial aspects".²⁵ The communication adopted a draft shaping the EU agricultural policy for the period 2014-2020, in line with the objectives of the Europe 2020 strategy, aiming for the efficient use of resources in EU agriculture and rural areas through smart, sustainable economic growth conducive to social integration.²⁶ The reform envisaged abandoning the rigid division of tasks between the two pillars and greater flexibility in the CAP to address new challenges. The focus was to be on the goals to be achieved, rather than the location of individual instruments.²⁷ The financing period of 2014-2020 was characterized by the expansion of solutions in the field of biodiversity protection.

In 2013, a package of regulations was adopted, within which solutions adopted in Regulation (EU) No. 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)²⁸, in Regulation (EU) No. 1306/2013 of the European Parliament and of the

²⁵ Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "The CAP towards 2020: Meeting the challenges of the future in terms of food, natural resources and territorial aspects", COM (2010)/672, Brussels 2010.

²⁶ Europe 2020. A Strategy for Smart, Sustainable and Inclusive Growth. Communication from the Commission, COM (2010)/2020, European Commission, Brussels 2010.

²⁷ Czyżewski, A. & Stępień, S., 'Wspólna Polityka Rolna – doświadczenia i przyszłość' [Common Agricultural Policy – experiences and future], (2012) 2(11) Przegląd Prawa Rolnego [Review of Agricultural Law] 162, <<https://repozytorium.amu.edu.pl/server/api/core/bitstreams/f9990125-a3eb-4565-8d89-ca8413f0fc39/content>>.

²⁸ Regulation (EU) No. 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No. 1698/2005 (OJ L 347/487, 20.12.2013).

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Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy²⁹, and in Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy³⁰ had a significant impact from the perspective of biodiversity protection.

Firstly, the principle of mutual compatibility has still been maintained (Articles 91-95 of Regulation No. 1306/2013). Secondly, within the direct payment system, it was envisaged that besides the basic payment scheme or the single area payment scheme, each farm would receive a per-hectare payment for implementing certain agricultural practices beneficial to climate and environment or equivalent practices (so-called "greening"). Member States were obliged to allocate 30% of national funds for these payments. Failure to comply with this requirement resulted in penalties exceeding the amount of payments for this purpose. Practices considered beneficial for the environment and climate included crop diversification, maintaining permanent grasslands, and maintaining an ecological focus area. Regarding crop diversification, farmers were required to cultivate at least two different crops if the agricultural area exceeded 10 hectares, and at least three crops if it exceeded 30 hectares. The main crop could occupy a maximum of 75% of the agricultural area, and two main crops could occupy a maximum of 95% of the agricultural area. The maintained ecological focus area should cover at least 5% of the agricultural area for farms larger than 15 hectares (excluding permanent grasslands). Ecological focus areas included fallow land, terraces, buffer strips, agroforestry hectares, strips along forest edges, areas with short rotation coppices, forested areas, areas with catch crops or green cover. Equivalent practices for crop diversification included crop rotation, winter soil cover, or catch crops, while equivalent practices for maintaining permanent grasslands included managing meadows or pastures and extensive grazing systems. Practices equivalent to maintaining ecological focus areas included *inter alia*: ecological fallow, creating buffer zones for areas of high natural value, Natura 2000 areas, or other sites for biodiversity conservation, managing non-cultivated buffer zones and field margins, maintaining peat or marshy soils under grass cover, production on arable land without using fertilizers, plant protection products, irrigation, or sowing the same crop two years in a row (Articles 43-46 of Regulation No. 1307/2013).

²⁹ Regulation (EU) No. 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No. 352/78, (EC) No. 165/94, (EC) No. 2799/98, (EC) No. 814/2000, (EC) No. 1290/2005 and (EC) No. 485/2008 (OJ L 347/549, 20.12.2013).

³⁰ Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules on direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No. 637/2008 and Council Regulation (EC) No. 73/2009 (Official Journal of the European Union of 20 December 2013, L 347/608).

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Finally, within the rural development policy, significant investments from the perspective of biodiversity conservation in agricultural activities were foreseen, such as afforestation and creation of forested areas, establishing agroforestry systems, as well as maintaining agricultural practices with a positive impact on the environment and climate and conducive to necessary changes in this area - agri-environmental-climate actions. Therefore, it can be stated that in the financial perspective 2014-2020, the CAP already significantly addressed biodiversity conservation issues. However, as subsequently revealed, the implemented mechanisms did not succeed, in the sense that they did not bring significant improvement in the state of biodiversity in rural areas. In March 2020, the European Commission published an assessment of the CAP's impact on habitats, landscapes, and biodiversity.³¹ According to the assessment, it was not possible to conduct an overall impact assessment due to lack of appropriate monitoring data. It was noted in the assessment that Member States did not sufficiently utilize the instruments available under the CAP to protect semi-natural areas, especially grasslands, or to ensure that all semi-natural habitats that could be subject to agricultural activity qualified for direct payments. It was also found that Member States could have implemented more actions under the CAP to reconcile agricultural activity with biodiversity conservation. Moreover, the concept and funding of agri-environmental-climate actions, which were intended to provide support for farms engaged in intensive agricultural production, were not attractive enough to bring about the necessary changes in management for biodiversity improvement.³²

Moreover, in 2020, the European Court of Auditors published a special report in which it assessed, among other things, whether the legal framework regulating the CAP for 2014-2020 provided better protection of this diversity. As a result of the audit, the Court found that there was a lack of coordination between individual EU policies and strategies. One of the effects of this situation was the failure to address the decrease in genetic diversity in these policies and strategies. Additionally, the Court found that the Commission's monitoring of biodiversity expenditure under the CAP did not provide reliable information. Information on the impact of direct payments under the CAP (which constitute 70% of EU agricultural expenditure) on biodiversity was either unavailable or limited. Moreover, the requirements within direct payments that could contribute to improving biodiversity (greening, cross-compliance) were not properly implemented – both the Commission and the Member States applied solutions with little impact in this area. The Court also indicated that EU instruments for rural development had greater potential than direct payments in maintaining and enhancing biodiversity. However, Member States rarely used high-impact rural development

³¹ European Commission, Evaluation of the impact of the CAP on habitats, landscapes, biodiversity. Final report, Alliance Environnement, November 2019, <https://agriculture.ec.europa.eu/system/files/2020-03/ext-eval-biodiversity-final-report_2020_en_0.pdf>.

³² Ibid, European Commission, pp. 157-162.

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measures, such as result-oriented actions and actions providing significant environmental benefits. The Court recommended that the Commission should improve coordination and enhance the concept of the EU biodiversity protection strategy for the post-2020 period in the next funding period, monitor expenditure more accurately, increase the contribution of direct payments and rural development measures to biodiversity on agricultural land, and develop reliable indicators to assess the impact of the CAP on biodiversity on agricultural land.³³

6. THE FINANCIAL PERIOD 2021-2027

The currently applicable financial perspective 2021-2027 should, in principle, address the objections raised by the European Court of Auditors and include provisions consistent with the assumptions indicated by the European Commission in the communication "European Green Deal"³⁴ as well as the assumptions outlined in the accompanying strategies: the Biodiversity Strategy³⁵ and the "Farm to Fork" Strategy³⁶ presented by the European Commission in 2020. The goals of these strategies within the scope of the Common Agricultural Policy for 2021-2027 should contribute to achieving the following biodiversity protection objectives in agricultural activities: supporting the transition to fully sustainable practices by farmers and encouraging them to make such changes; reducing the total use of pesticides and the risks associated with their use by 50% by 2030 and reducing the use of more dangerous pesticides by 50% by 2030; restoring at least 10% of agricultural land with high-diversity landscape features such as buffer zones, fallow land subject to crop rotation, hedges, non-productive trees, terrace walls, and ponds; ensuring that at least 25% of agricultural land in the EU is under organic farming by 2030; increasing access to high-quality, diverse seed materials, including traditional and locally adapted varieties.

The primary legal act of the CAP for the 2021-2027 funding period is Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans drawn up by Member States under the Common Agricultural Policy (CAP strategic plans) and financed by the European Agricultural Guarantee Fund (EAGF)

³³ European Court of Auditors Special Report No 13/2020, Biodiversity on agricultural land – the common agricultural policy did not prevent a deterioration in the situation, pp. 4-5, <https://www.eca.europa.eu/Lists/ECADocuments/SR20_13/SR_Biodiversity_on_farmland_EN.pdf>.

³⁴ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, European Green Deal, Brussels, 11.12.2019, COM (2019) 640 final.

³⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Biodiversity Strategy for 2030, Bringing nature back into our lives, Brussels, 20.5.2020, COM (2020) 380 final.

³⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Farm to Fork Strategy for a fair, healthy and environmentally friendly food system, Brussels, 20.5.2020, COM (2020) 381 final.

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and by the European Agricultural Fund for Rural Development (EAFRD).³⁷ The financial perspective of the CAP 2021-2027 envisages, it seems, a greater ambition in achieving environmental and climate-related goals. Contributing to halting and reversing biodiversity loss, enhancing ecosystem services, and protecting habitats and landscapes is identified as one of the specific objectives of Regulation 2021/2115 establishing rules on support for strategic plans drawn up by Member States under the Common Agricultural Policy. In the new programming period, a system of the so-called new “green architecture” of the CAP is proposed, consisting, as before, of three solutions in the field of the environment and climate, including biodiversity. The current solutions are the conditionality system replacing the previously applicable principle of cross-compliance, eco-schemes, and commitments related to the environment, climate, and other management obligations under rural development interventions. The conditionality system, like the previously applicable principle of cross-compliance, consists of basic management requirements and standards of good agricultural and environmental condition (GAEC) (Articles 12-13 of Regulation 2021/2115), the non-compliance with which results in the imposition of an administrative penalty on farmers and other beneficiaries.

Currently, the basic management requirements significant for the protection of biodiversity include: Article 11(3)(e), and - concerning mandatory requirements regarding the control of diffuse pollution sources by phosphates - (h) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy³⁸; Articles 4 and 5 of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources³⁹; Article 3(1), Article 3(2)(b), Articles 4(1), (2), and (4) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds⁴⁰; Articles 6(1) and (2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora⁴¹; the first and second sentences of Article 55 of Regulation (EC) No. 1107/2009 of the European Parliament and of the

³⁷ Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans prepared by Member States under the common agricultural policy (CAP strategic plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD), Official Journal of the European Union of 2021, L 435/1.

³⁸ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, Official Journal of the European Union of 22.12.2000, L 327/1.

³⁹ Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, Official Journal of the European Communities of 31.12.1991, L 375/1.

⁴⁰ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, Official Journal of the European Union of 26.1.2010, L 20/7.

⁴¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, Official Journal of the European Communities of 22.7.1992, L 206/7.

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Council of 21 October 2009 concerning the placing of plant protection products on the market⁴²; Article 5(2), Articles 8(1)-(5), Article 12 regarding restrictions on the use of pesticides in protected areas designated under Directive 2000/60/EC and regulations concerning the Natura 2000 network, Articles 13(1) and (3) regarding the handling, storage, and disposal of pesticide residues of Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides.⁴³

On the other hand, the standards of good agricultural and environmental condition relevant in the context of biodiversity protection include: maintaining permanent grassland, protecting peatlands and wetlands, banning stubble burning, establishing buffer zones along watercourses, managing plowing to reduce the risk of soil degradation and erosion, maintaining minimum soil cover, crop rotation, ensuring a minimum percentage of agricultural land used for non-productive features or areas (at least 4% of arable land at the farm level, or at least 7% of arable land at the farm level, if it includes catch crops or nitrogen-fixing crops grown without the use of plant protection products, of which 3% are fallow or non-productive elements), preserving landscape features, banning the cutting of hedges and trees during the bird nesting and rearing season, and optionally - measures to prevent the spread of invasive plant species and finally banning the conversion or plowing of permanent grassland designated as environmentally sensitive permanent grassland in Natura 2000 areas. A novelty is the standard concerning the protection of wetlands and peatlands. These areas contribute significantly to the retention of groundwater and surface water, and primarily to the storage of carbon assimilated by plants. They are also habitats for many rare species, making them a reservoir of biodiversity protection, which is degraded due to changes in hydrological conditions and land use practices. Degraded peatlands release biogenic elements into surface and groundwater, and the emission of carbon dioxide during peat mineralization contributes to climate change. The minimum standards of good agricultural and environmental condition are detailed by the Member States at the national or regional level in line with the main objectives of these standards and, where appropriate, considering the specific characteristics of the areas, including soil and climatic conditions, existing farming systems, agricultural practices, farm size and structure, land use, and the specifics of the outermost regions (Article 13 of Regulation 2021/2115).

Another solution for protecting biodiversity under Regulation 2021/2115 is the eco-schemes, which replace the previous greening practices.

⁴² Regulation (EC) No. 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (Official Journal of the European Union of 24.11.2009, L 309/1).

⁴³ Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides, Official Journal of the European Union of 24.11.2009, L 309/71.

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Eco-schemes are voluntary schemes for climate, environment, and animal welfare, established obligatorily by Member States in accordance with the general conditions specified in Article 31 of Regulation 2021/2115 and further detailed in the national strategic plans of the CAP. The general conditions for obtaining funding under eco-schemes indicate that support may be granted to professionally active farmers or their groups, who commit to adhering to agricultural practices beneficial for the climate, environment, and animal welfare, as well as combating antimicrobial resistance listed by Member States. These practices should be designed to meet one or more of the specific objectives of Regulation 2021/2115, such as contributing to climate change mitigation and adaptation, including through reducing greenhouse gas emissions and increasing carbon sequestration, promoting sustainable energy, supporting the sustainable development and efficient management of natural resources such as water, soil, and air, including by reducing dependence on chemicals, contributing to halting biodiversity loss and reversing this process, enhancing ecosystem services, and protecting habitats and landscapes. In relation to improving animal welfare and combating antimicrobial resistance, they should enhance the EU agriculture's response to societal demands for food and health, including high-quality, safe, nutrient-rich, and sustainably produced food, reducing food waste, increasing animal welfare, and combating antimicrobial resistance.

Each eco-scheme should generally cover at least two of the following areas of action for climate, environment, animal welfare, and combating antimicrobial resistance: climate change mitigation, including reducing greenhouse gas emissions from agricultural practices, maintaining existing carbon reservoirs, and increasing carbon sequestration; climate change adaptation, including actions to enhance the resilience of food production systems and the diversity of animals and plants to increase resistance to diseases and climate change; protecting or improving water quality and reducing pressure on water resources; preventing soil degradation, restoring soil, improving soil fertility, and managing nutrients [and soil fauna and flora]; protecting biodiversity, preserving or restoring habitats or species, including maintaining and creating landscape elements or non-productive areas; actions for the sustainable and limited use of pesticides, especially those posing risks to human health or the environment; actions to improve animal welfare or combat antimicrobial resistance.

Under eco-schemes, Member States should provide payments only for commitments that go beyond the relevant basic management requirements and standards of good agricultural and environmental condition, beyond the relevant minimum requirements for the use of fertilizers and plant protection products, animal welfare, as well as other relevant mandatory requirements established by national and Union law. Support for a specific eco-scheme takes the form of an annual payment for all eligible hectares covered by commitments. Payments are allocated as additional payments to the basic income support or compensatory payments for professionally active farmers or groups of professionally active farmers for all or part of the additional

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costs incurred and income lost due to the commitments made, and considering the ultimate goals of the eco-schemes; these payments may also cover transaction costs (Article 31 of Regulation No. 2021/2115). At the same time, it should be noted that a separate budget for eco-schemes has not been created. Their annual accounting based on planned areas and predetermined rates, without the possibility of increase in case of a small number of applications, involves the loss of funds (expenditure in the current year).⁴⁴

The third important solution from the perspective of biodiversity protection under Regulation No 2021/2115 concerning interventions related to rural development is commitments related to the environment, climate, and other management-related commitments. These commitments, similar to agri-environmental schemes, are voluntary for farmers. Member States are obliged to include agri-environmental and climate commitments among the interventions provided for in their CAP strategic plans and may include other management-related commitments. These payments may only be granted to farmers or other beneficiaries who voluntarily undertake management commitments considered beneficial for achieving one or more specific objectives specified in Article 6(1) and (2) of Regulation 2021/2115. Member States ensure payments only for commitments that go beyond the relevant basic requirements in terms of management and good agricultural practice standards in line with environmental protection, exceed relevant minimum requirements for the use of fertilizers and plant protection products and animal welfare, as well as other relevant mandatory requirements established under national and Union law, and differ from commitments specified within agri-environmental schemes. Member States may promote and support collective systems and result-based payment systems to encourage farmers or other beneficiaries to significantly improve environmental quality on a larger scale or in a measurable manner. Commitments are generally made for a period of five to seven years. In the case of support being granted for agri-environmental and climate commitments or commitments to conversion or maintenance of organic farming practices, Member States establish payment per hectare. For other commitments, Member States may apply units other than hectares. In duly justified cases, Member States may provide support in the form of lump-sum payments. Member States ensure that persons carrying out operations under such interventions have access to the necessary knowledge and information required for the implementation of such operations and, in order to provide assistance to farmers committing to changing their production system, provide appropriate training to those in need, as well as access to expert knowledge. Member States also ensure that interventions covered by the scope of this article are in line with interventions provided for within agri-environmental schemes (Article 70 of Regulation No. 2021/2115).

⁴⁴ Krawczyk, W., Paraponiak, P. & Szewczyk, A., 'Strategia „Zielonej architektury” we Wspólnej Polityce Rolnej na lata 2023-2027' ["Green Architecture" Strategy in the Common Agricultural Policy for the years 2023-2027], (2021), LIX (4) Wiadomości Zootechniczne [Zootechnical News] 45-47, <https://wz.iz.edu.pl/files/WZ_2021_4_art05.pdf>.

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For example, in the Polish National Strategic Plan, it can be observed that planned interventions in biodiversity protection largely continue the previous approach applied in the previous programming period: actions aimed at protecting valuable habitats and endangered species in Natura 2000 areas, protecting valuable habitats and endangered species outside Natura 2000 areas, extensive use of meadows and pastures in Natura 2000 areas, preserving traditional orchard varieties, perennial flower strips, preserving plant genetic resources in agriculture, preserving endangered animal genetic resources in agriculture. Complementing the above will be investments in agricultural holdings to reduce the pressure of agriculture on the natural environment and climate and serve their protection. These investments will include equipment or machinery for the application of natural, mineral, and lime fertilizers and precise dosing of fertilizers and soil application, introduction of plant protection measures with solutions reducing the risk of their abolition, non-plowing cultivation, as well as projects related to renewable energy sources used in the production cycle (from agricultural biogas) and energy efficiency of farm buildings for agricultural production. The implementation of environmentally and climate-friendly practices, such as non-plowing cultivation, precise application of fertilizers and plant protection products, or manure acidification, requires not only specialized equipment but also skills in using these technologies by qualified workers. Significant environmental and climate-related interventions implemented by agricultural holdings will also include projects for adapting agriculture to climate change (rainwater and meltwater collection tanks, installations for rainwater management, water recycling installations, technical infrastructure designed for adaptation to adverse weather conditions).⁴⁵

Although the new financial perspective of the CAP appears more ambitious in terms of biodiversity protection, not all of the adopted solutions may impose positive effect on biodiversity. On the contrary, they may be even harmful. One of the main examples of this is financial support for grazing semi-natural habitats. Grazing is a common measure to prevent succession in open grasslands and is often used to restore and maintain grassland biodiversity. The effect of grazing may, however, vary among different environments, climates, organism groups, and trophic levels. Overgrazing may have large negative impacts on grassland biodiversity and the grassland recovery after being overgrazed is most likely slow. There is a growing awareness that CAP often results in over-grazing and this raises the question of whether CAP-grazing regimes are compatible with Natura 2000 targets for biodiversity.⁴⁶

Moreover, it seems that the crucial factor in meeting the objectives of the CAP's green architecture is setting ambitious targets by the Member States. However, the conclusions drawn from the report prepared by

⁴⁵ Ibid, Krawczyk, W., Paraponiak, P. & Szewczyk, A. pp. 49-51.

⁴⁶ Kindval, O. et al., 'Subsidized Common Agricultural Policy grazing jeopardizes the protection of biodiversity and Natura 2000 targeted species', (2022) 25 Animal Conservation 698, <<https://doi.org/10.1111/acv.12773>>.

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BirdLife International, the European Environmental Bureau, and the WWF European Policy Office on this subject seem to claim rather opposite attitude of the Member States.⁴⁷ Member States' proposed eco-schemes will fall very short of expectations. Only 19% of eco-schemes are deemed likely to deliver on their stated environmental objectives, 40% would need significant improvements to be effective, and 41% are completely misaligned. Moreover, many well designed schemes are either underfunded or likely to be outcompeted by less demanding and/or more financially attractive schemes. The worst examples identified include: eco-schemes for precision farming (supposedly targeting reductions in fertiliser or pesticide use), when they do not include any benchmarks or requirements for actual input reductions; eco-schemes for no-till farming, when they do not have any safeguards on the use of herbicides (e.g. glyphosate) nor requirements to apply the other two "pillars" of conservation agriculture: complex crop rotations and constant soil cover. Not only does no-till have limited benefits as a standalone practice (except in soil erosion hotspots), but these schemes could even lead to increases in herbicide use, as the most common alternative strategy to ploughing for weed suppression. Finally, another eco-scheme was poorly rated: eco-scheme for "end-of-pipe" solutions in intensive livestock production, such as feed additives for dairy cows, certified feeding plans for cattle, or lower than average or reduced antimicrobial use.⁴⁸

What is more, environmental monitoring and reporting of the CAP, especially for biodiversity, seems to be insufficient and need to be expanded. Public administrations in many Member States have insufficient experience with result-oriented measures and inadequate resources for wildlife monitoring. These require significantly increased investments in funding, human resources, scheme design, training and in situ monitoring. The European Commission should guide Member States in ensuring the selection of suitable indicators for biodiversity, as well as for habitats and landscape structures. The new delivery model requires tight monitoring of these indicators to enable rapid performance evaluation, landscape features and grassland management. Member States should employ improved and harmonized standards in recording and archiving relevant biodiversity, landscapes, and socioeconomic data and improve access to Databases for researchers and the public.⁴⁹

Regardless of the above, due to farmers' protests regarding restrictions on agricultural activities related to the implementation of the European Green Deal provisions and its accompanying strategies, a noticeable shift has occurred in the European Commission's stance on the previously declared

⁴⁷ Will CAP eco-schemes be worth their name? An assessment of draft eco-schemes proposed by Member States, Report published by BirdLife Europe, European Environmental Bureau (EEB), and WWF European Policy Office, November 2021, <<https://www.birdlife.org/wp-content/uploads/2021/11/CAP-report-eco-schemes-assessment-Nov2021.pdf>>.

⁴⁸ Ibid, Will CAP eco-schemes be worth their name?... p. 3.

⁴⁹ Pe'er, G. et.al, 'How can the European Common Agricultural Policy help halt biodiversity loss? Recommendations by over 300 experts', (2022) 15 (6) Conservation Letters e12901, <<https://doi.org/10.1111/conl.12901>>.

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reforms in recent months. The Commission announced the lifting of the obligation to set aside 4% of arable land, provided that the Member State establishes an eco-scheme in this regard by 2024, for which farmers will receive an additional payment. Additionally, farmers will have the option to choose between crop diversification and crop rotation. For farms with 10 to 30 hectares of arable land, having 2 crops will suffice, with the largest crop not exceeding 75%, and for farms with more than 30 hectares of arable land, having 3 crops will suffice, with the largest crop not exceeding 75%, and the two main crops not exceeding 95%. Moreover, simplifications have been provided in the standard regarding the obligation to maintain soil cover. The Member State will have the freedom to decide during which period of the year to establish the obligation to maintain soil cover, making it easier for farmers to perform specific agricultural practices at a convenient time. A significant negative change from the perspective of biodiversity protection is the exclusion of penalties for non-compliance with the conditionality system for farms below 10 hectares, which in practice means exempting such farms from the aforementioned system. These actions are complemented by the Commission's abandonment of the proceedings regarding the regulation on the sustainable use of plant protection products⁵⁰ and the Commission's failure to proceed with the regulation on the restoration of natural resources.⁵¹ These changes indicate a lack of political agreement among Member States for far-reaching changes in biodiversity protection within the Common Agricultural Policy and suggest that the ambitious plans envisaged in the previously announced strategic documents will be very difficult to fulfill.

7. CONCLUSION

The CAP has made significant strides towards integrating biodiversity protection into agricultural policy. However, its effectiveness is limited by not always properly selected solutions (for instance grazing payments on Nature 2000 areas), varying national implementations, that do not always reach for the most ambitious solutions, economic pressures, and recent political shifts. To achieve the ambitious goals set out in the European Green Deal, a stronger commitment and more consistent enforcement across Member States are necessary. This includes maintaining high standards for biodiversity protection and ensuring that all farms, regardless of size, contribute to these goals. Moreover, it would be recommended if the Commission ensures transparent evaluation of results and some benefits for Member States who introduce ambitious environmental programs. It would be also recommended that the Commission take measures to achieve better

⁵⁰ Proposal from the European Commission for a Regulation of the European Parliament and of the Council on sustainable use of plant protection products and amending Regulation (EU) 2021/2115, COM/2022/305 final.

⁵¹ Proposal from the European Commission for a Regulation of the European Parliament and of the Council on the restoration of natural resources, Brussels, COM (2022) 304 final.

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communication and promotion of the advantages of the proposed solutions among farmers.

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AUTHOR'S DECLARATION AND ESSENTIAL ETHICAL COMPLIANCES

Author's Contributions (in accordance with ICMJE criteria for authorship)

This article is 100% contributed by the sole author. S/he conceived and designed the research or analysis, collected the data, contributed to data analysis & interpretation, wrote the article, performed critical revision of the article/paper, edited the article, and supervised and administered the field work.

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Research involving human bodies or organs or tissues (Helsinki Declaration)

The author(s) solemnly declare(s) that this research has not involved any human subject (body or organs) for experimentation. It was not a clinical research. The contexts of human population/participation were only indirectly covered through literature review. Therefore, an Ethical Clearance (from a Committee or Authority) or ethical obligation of Helsinki Declaration does not apply in cases of this study or written work.

Research involving animals (ARRIVE Checklist)

The author(s) solemnly declare(s) that this research has not involved any animal subject (body or organs) for experimentation. The research was not based on laboratory experiment involving any kind animal. The contexts of animals not even indirectly covered through literature review. Therefore, an Ethical Clearance (from a Committee or Authority) or ethical obligation of ARRIVE does not apply in cases of this study or written work.

Research on Indigenous Peoples and/or Traditional Knowledge

The author(s) solemnly declare(s) that this research has not involved any Indigenous Peoples as participants or respondents. The contexts of Indigenous Peoples or Indigenous Knowledge are only indirectly covered, through literature review. Therefore, an Ethical Clearance (from a Committee or Authority) or prior informed consent (PIC) of the respondents or Self-Declaration in this regard does not apply in cases of this study or written work.

Research involving Plants

The author(s) solemnly declare(s) that this research has not involved the plants for experiment or field studies. The contexts of plants are only indirectly covered through literature review. Yet, during this research the author(s) obeyed the principles of the Convention on Biological Diversity and the Convention on the Trade in Endangered Species of Wild Fauna and Flora.

Evolution of Biodiversity Protection in the Framework of European Common Agricultural Policy

(Optional) Research Involving Local Community Participants (Non-Indigenous)

The author(s) solemnly declare(s) that this research has not directly involved any local community participants or respondents belonging to non-Indigenous peoples. Neither this study involved any child in any form directly. The contexts of different humans, people, populations, men/women/children and ethnic people are only indirectly covered through literature review. Therefore, an Ethical Clearance (from a Committee or Authority) or prior informed consent (PIC) of the respondents or Self-Declaration in this regard does not apply in cases of this study or written work.

(Optional) PRISMA (Preferred Reporting Items for Systematic Reviews and Meta-Analyses)

The author(s) has/have NOT complied with PRISMA standards. It is not relevant in case of this study or written work.

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